Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

MICHAEL O'LEARY, et al.,

Petitioners,

v.

JOHN MACK,

Respondent.

HOWARD A. PETERS, III, et al.,

Petitioners,

v.

JOHN LIPSCOMB-BEY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

JAMES E. RYAN
Attorney General of Illinois

BARBARA A. PREINER
Solicitor General of Illinois

RITA M. NOVAK*
JAN E. HUGHES
Assistant Attorneys General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-5659

*Counsel of Record

Attorneys for Petitioners

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QUESTION PRESENTED FOR REVIEW

Section 2000bb-1 of the Religious Freedom Restoration Act (42 U.S.C. § 2000bb-1) provides, in part, that "[g]overnment shall not substantially burden a person's exercise of religion . . . ." The Seventh Circuit held that a substantial burden on the free exercise of religion "is one that forces adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs."

The question presented is:

Does the Seventh Circuit's definition of substantial burden, which conflicts with definitions formulated by other courts of appeals, improperly expand the application of the Religious Freedom Restoration Act, and is it particularly unworkable in the prison setting?

PARTIES TO PROCEEDING

Petitioners:

MICHAEL O'LEARY, Deputy Director, Department of Corrections

SALVADOR GODINEZ, former Warden, Stateville Correctional Center

JEROME SPRINGBORN, Assistant Warden

JAMES SCHOMIG, former Assistant Warden

HOWARD A. PETERS, III, former Director, Department of Corrections

GEORGE C. WELBORN, former Warden of Menard Correctional Center

ALAN L. FRENTZEL, former Assistant Warden of Menard Correctional Center

LEO HAYES, Chaplain

Respondents:

John Mack

John Lipscomb-Bey

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OPINIONS BELOW

The judgment and opinion of the United States Court of Appeals for the Seventh Circuit of which review is sought is reported at 80 F.3d 1175 (7th Cir. 1996) and is reprinted in the Appendix at 1-11. The order of the Court of Appeals upon Petitioners' Petition for Rehearing, With Suggestions for Rehearing En Banc is reprinted in the Appendix at 14-15.

The opinion of the District Court for the Northern District of Illinois in *Mack v. O'Leary* is unreported and is reprinted in the Appendix at 18-24. The opinion of the District Court for the Southern District of Illinois in *Lipscomb-Bey v. Peters* is unreported and is reprinted in the Appendix at 25-28.

JURISDICTION OF THIS COURT

The judgment of the United States Court of Appeals for the Seventh Circuit of which review is sought was entered on April 3, 1996. A timely petition for rehearing, with suggestions for rehearing en banc was filed with that court on May 8, 1996, upon an extension of time granted by the court. The court denied the petition for rehearing on January 8, 1997. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The text of the Religious Freedom Restoration Act (42 U.S.C. §§ 2000bb-2000bb-4) is reprinted in the Appendix at 39-41.

STATEMENT OF THE CASE

Proceedings Relating to John Mack

Respondent John Mack, a Muslim inmate in the Illinois corrections system, appearing *pro se*, filed a complaint against various officials of the Illinois Department of Corrections in February 1994, pursuant to 42 U.S.C. § 1983 for deprivation of his rights guaranteed by the First, Eighth, and Fourteenth Amendments and for violation of the Religious Freedom Restoration Act ("RFRA") relating to the Ramadan services held at Stateville Correctional Center in 1992 and 1993. (Mack Record "M.R." Doc. 1). Mack claimed that the defendants denied his request to use the prison theater building for Ramadan services and forced him and other Muslims to gather for the services in the prison dining hall, which he alleged was not an adequate facility because it was dirty, had no bathroom, and did not allow the Muslims to come together in prayer formation because the tables were bolted to the floor. (M.R. Docs. 1 and 20).

On January 10, 1995, the district court entered judgment for the defendants and dismissed Mack's claim with prejudice. (M.R. Doc. 38). The court found that Mack's allegations failed to state a cause of action, even assuming the truth of the allegations. (*Id.* at 3). The court concluded that Mack's claims against the defendants in their official capacities were outside the scope of § 1983 and were barred by the Eleventh Amendment. (*Id.* at 4-5). The district court found that Mack's claims against the defendants in their individual capacities did not fare any better because Mack did not show that the defendants deprived him of his federal rights. (*Id.* at 5-8). Additionally, the court concluded that RFRA was not implicated because Mack failed to establish that the defendants substantially burdened the exercise of his beliefs. (*Id.* at 6-7).

The district court concluded that the defendants made a reasonable effort to provide Mack with the opportunity to practice his faith during the months of Ramadan in 1992 and 1993. (*Id.* at 7). The court found that the defendants gave Mack the opportunity to purify his body before being escorted to the cafeteria and permitted him to worship and pray with other followers in the cafeteria. (*Id.*). Finally, the court determined that the alleged interference with Mack's prayers were due to the restrictions imposed by the physical limitations of the facility, but that such "restrictions do not trespass upon Mack's ability to retain and worship the principle that is central to Islam." (*Id.*)

Mack filed a timely notice of appeal. (M.R. Doc. 41).

Proceedings Relating to John Lipscomb-Bey

Respondent John Lipscomb-Bey, a member of the Moorish Science Temple of America ("MSTA") and an inmate in the Illinois corrections system, appearing *pro se*, filed a complaint against various officials of the Illinois Department of Corrections in January 1992, pursuant to 42 U.S.C. § 1983 for deprivation of his rights guaranteed by the First and Fourteenth Amendments relating to the refusal to permit a MSTA religious banquet on prison grounds with outside guests in attendance. (Lipscomb-Bey Record "L.R." Doc. 1).

A magistrate judge presided over a bench trial on July 22, 1993. (L.R. Docs. 46 and 50). Lipscomb-Bey represented himself. On July 27, 1993, the magistrate judge recommended that judgment be entered in favor of the defendants, concluding that the failure of the prison officials to allow the banquet did not rise to the level of a constitutional violation. (L.R. Doc. 51). On March 11,

1994, the district court adopted the magistrate's findings and conclusions and entered judgment for the defendants. (L.R. Docs. 55 and 56).

Lipscomb-Bey filed a timely notice of appeal. (L.R. Doc. 57).

Decision of the Court of Appeals

On December 3, 1996, without hearing oral argument, the Seventh Circuit issued a decision, which consolidated these *pro se* cases. (App. 1-11). The court stated that the "appeals require us to consider for the first time the meaning of the term 'substantially burden a person's exercise of religion,' which is the key term in the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb." (App. 2). The court noted that RFRA enlarges the free exercise right beyond the constitutional bounds set forth in *Employment Division v. Smith*, 494 U.S. 872 (1990), but asked, "How far beyond?" (App. 5). The court stated that the circuits have answered the question different ways, noting that the Fourth, Ninth, and Eleventh Circuits define "substantial burden" as one that either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires. (*Id.*). The court noted also that the Eighth and Tenth Circuits use a broader definition, in that action that forces religious adherents to refrain from religiously motivated conduct or that significantly inhibits or constrains conduct or expression that manifests some central tenet of a person's individual beliefs imposes a substantial burden on the exercise of the individual's religion. (*Id.*). The court stated that the Sixth Circuit "seems to straddle this divide, asking whether the burdened practice is 'essential' or 'fundamental[.]' " (*Id.*)

The court stated that it did not consider the holdings inconsistent or evidence of an intercircuit split, but it concluded that "the more generous definition is more faithful both to the statutory language and to the approach that the courts took before the *Smith* case." (App. 5-6). The court then held that a substantial burden on the free exercise of religion "is one that forces adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs." (App. 6).

Based on this definition, the court concluded that Mack had stated a claim and remanded for further proceedings. (App. 8). The court did affirm that portion of the district court's decision dismissing Mack's claims for damages under section 1983 from the defendants in their official capacities because that claim was barred by the Eleventh Amendment. (App. 10-11). Regarding Lipscomb-Bey, the court affirmed the district court's judgment in favor of the defendants because they established both a compelling governmental interest in imposing the "modest burden" and the absence of any less restrictive alternative. (App. 9, 11).

REASONS FOR GRANTING THE WRIT

The proper construction and application of the Religious Freedom Restoration Act has been the subject of many decisions since its enactment in 1993. Courts have taken divergent approaches in formulating the appropriate meaning of the essential terms of the statute. A significant number of those cases involves application of the statute in the prison setting. Given the scores of prison officials who must apply this statute on a daily basis, the importance of settling the meaning of the statute is clear.

The petitioners acknowledge that on October 15, 1996, the Court granted the petition for writ of certiorari by the City of Boerne, Texas in *City of Boerne v. Flores*, No. 95-2074, which involves the constitutionality of the Religious Freedom Restoration Act. Argument was heard on February 19, 1997. The constitutionality of the Religious Freedom Restoration Act is also the issue involved in a petition filed on October 29, 1996, in *Sullivan v. Sasnett*, No. 96-710. Although the issues presented below are not identical to the issue in the *Flores* case, the petitioners here request that this petition for writ of certiorari be considered in light of any decision of this Court in *Flores*.

I.

THE SEVENTH CIRCUIT'S DEFINITION OF "SUBSTANTIAL BURDEN" AS THAT TERM IS USED IN THE RELIGIOUS FREEDOM RESTORATION ACT CONFLICTS WITH OTHER CIRCUITS' DEFINITIONS OF THE TERM.

The Religious Freedom Restoration Act ("RFRA") provides that government shall not substantially burden a person's exercise of religion except when the government demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. 42 U.S.C. § 2000bb-1. The Seventh Circuit held that "a substantial burden on the free exercise of religion, within the meaning of the Act, is one that forces adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs." (App. 6).

The Seventh Circuit's definition of "substantial burden" on the exercise of religion is in direct conflict with the definitions articulated by other circuits. Even the court acknowledged that the various circuits have found "different ways" to define "substantial burden." (App. 5). Similarly, the Third Circuit, citing decisions of the Ninth and Tenth Circuits, has stated that the showing of a substantial burden under RFRA "seems to be unsettled." *Small v. Lehman*, 98 F.3d 762, 767 (3rd Cir. 1996). The Fifth Circuit has stated that the "statutory contours of RFRA are vague and its legal limits and standards have yet to be defined[,]" noting that "substantial burden" has been defined in several different ways. *Hicks v. Garner*, 69 F.3d 22, 26 (5th Cir. 1995).

The conflict existing among the circuits is clear. In direct contrast to the definition formulated by the Seventh Circuit, the Fourth, Ninth, and Eleventh Circuits have stated that the RFRA analysis involves the question whether an individual has been compelled to engage in conduct proscribed by his religious beliefs or has been forced to abstain from any action that his religious belief mandates or requires that he take. *Stefanow v. McFadden*, 103 F.3d 1466, 1471 (9th Cir. 1996) (citing *Bryant v. Gomez*, 46 F.3d 948 (9th Cir. 1995)); *Goodall by Goodall v. Stafford County School Board*, 60 F.3d 168, 172-173 (4th Cir. 1995), *cert. denied*, 116 S. Ct. 706 (1996); *Cheffer v. Reno*, 55 F.3d 1517, 1522 (11th Cir. 1995). The Third Circuit recently remanded a case to the district court to determine whether a particular practice was mandated by the individual's faith. *Small v. Lehman*, 98 F.3d 762, 767-768 (3rd Cir. 1996). At the opposite end of the spectrum is the Eighth Circuit, which looks to whether a governmental action meaningfully curtails a religiously motivated practice. *Christians v. Crystal Evangelical Free Church*

(In re Young), 82 F.3d 1407, 1419-1420 (8th Cir. 1996), ("defining substantial burden broadly to include religiously motivated as well as religiously compelled conduct is consistent with the RFRA's purpose to restore pre-*Smith* free exercise case law"), *petition for cert. filed*, 65 U.S.L.W. 3205 (U.S. Sept. 19, 1996) (No. 96-437).

Other circuits ascertain whether a practice is central to or a fundamental tenet of a particular religion. *See Abdur-Rahman v. Michigan Department of Corrections*, 65 F.3d 489, 491-492 (6th Cir. 1995) (whether a governmental policy affects an essential tenet of a religious belief or whether a practice is fundamental to a religion) and *Werner v. McCotter*, 49 F.3d 1476, 1480 (10th Cir. 1995) (to exceed RFRA's substantial burden threshold, a government regulation must significantly inhibit or constrain conduct or expression that manifests some central tenet of an individual's beliefs, must meaningfully curtail the individual's ability to express adherence to his faith, or must deny a person reasonable opportunities to engage in those activities that are fundamental to an individual's religion), *cert. denied*, 115 S. Ct. 2625 (1995).

The Seventh Circuit's statement that these "verbal differences . . . may come to nothing in practice," understates the direct conflict that exists among the circuits in applying RFRA. Requiring a plaintiff to make a threshold showing that a particular practice or conduct is mandated by his or her religion or is central or fundamental to the religion is far different from requiring a showing that a practice or conduct is merely religiously motivated. The conflict is not one simply in the reasoning applied to claims of RFRA violations, but is one that could result in cases involving similar facts being decided differently. Under these circumstances and in view of the importance of this question, this Court's guidance is required.

II.

THE SEVENTH CIRCUIT'S DEFINITION OF "SUBSTANTIAL BURDEN" IMPROPERLY EXPANDS THE MEANING OF THE RELIGIOUS FREEDOM RESTORATION ACT AND IS UNWORKABLE IN THE PRISON SETTING.

The Seventh Circuit stated that RFRA "enlarges the free-exercise right beyond the constitutional bounds set forth in [*Employment Division v.*] *Smith*, [494 U.S. 872 (1990)]." (App. 5). The Court then asked, "How far beyond?" (*Id.*). In answering this question, the court announced its definition of "substantial burden." There simply is no evidence that, in enacting RFRA, Congress intended to enlarge the scope of religious exercise claims subject to protection, which is precisely what was done by the Seventh Circuit.

The focus of RFRA is on the amount of justification required to withstand challenges to governmental enactments or actions. *See* 42 U.S.C. § 2000bb(b)(1) (the purpose of RFRA is "to restore the compelling interest test . . . ."). Congress found that the Court in *Employment Division v. Smith*, 494 U.S. 872 (1990) "virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral towards religion[.]" Thus, Congress's objection was with the Court's articulation of the government's burden required to prevail against free exercise challenges—not with the perceived scope of the claims subject to First Amendment analysis. *See Goodall*, 60 F.3d at 171 (RFRA does not purport to create a new substantial burden test.).

The legislative history of RFRA shows that the substantial burden requirement was intended to carry forward the pre-*Smith* law: "The committee expects that the courts will look to free exercise cases decided prior to *Smith* for guidance in determining whether the exercise

of religion has been substantially burdened and the least restrictive means have been employed in furthering a compelling governmental interest." S. Rep. No. 111 at 8-9.

The notion that the practice or conduct claimed to have been substantially burdened must be something more that merely "religiously motivated" appears consistently throughout case law. For example, in *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972), it was undisputed that forcing Amish school children to attend secondary schools "contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child." The operation of the compulsory attendance law compelled the Amish "to perform acts undeniably at odds with fundamental tenets of their religious beliefs." *Yoder*, 406 U.S. at 218.

The Court articulated the substantial burden test most clearly in *Thomas v. Review Bd. of Indiana Employment Security*, 450 U.S. 707, 717-718 (1981):

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists.

See also Frazee v. Illinois Department of Employment Security, 489 U.S. 829, 834 (1989) ("There are assorted Christian denominations that do not profess to be compelled by their religion to refuse Sunday work.")

The court below established a definition of "substantial burden" that constitutes an unwarranted expansion of the application of RFRA. Case law simply does not support a finding that a substantial burden on the exercise of religion includes that conduct that is motivated by religion, as opposed to mandated or required by religion. The

Seventh Circuit's decision also essentially ignores the requirement that the burden be "substantial."

Under the Seventh Circuit's standard, the government would be required to prove the existence of a compelling interest on the basis of an allegation of a burden, no matter how slight, on the exercise of religion and to demonstrate that it has chosen the least restrictive means to regulate the interest. This is precisely the court's result in the *Lisscomb-Bey* case, where the court found that he had triggered application of RFRA, even though the burden on his religion was, in the court's own terms, a "modest" one. (App. 9). Similarly, the standard now requires the prison officials in the *Mack* case to show a compelling interest even though the alleged restriction is nothing more than a mere inconvenience or an "unnecessary problem[ ]," as even Mack alleged. (*See* M.R. Doc. 4-A).

In this regard, the Seventh Circuit's decision disregards the Court's substantial burden standard expressed in *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988), where the Court stated that incidental effects of otherwise lawful government programs which may make it more difficult to practice certain religions but have no tendency to coerce individuals into acting contrary to their religious beliefs do not constitute substantial burdens on the exercise of religions.

The approach chosen by the Seventh Circuit is particularly unworkable in the prison setting. The threshold is so low that any desired service, diet, publication or religious item could be framed as a religiously motivated request. For example, white supremacist inmates may argue that they believe they should not cell with black inmates based on their religious feelings. Another example, is that inmates may claim that their religion motivates them to

obtain gang-related symbols, medallions, or headgear. Under the court's standard, prisoners will meet the RFRA threshold simply by alleging that they have been denied specific services or privileges that their religious feelings motivate them to demand. While the court provided the assurance that prison officials "do not have to do handsprings to accommodate the religious needs of inmates," such assurance is meaningless in light of both the lack of precision in the court's test and the generous definition adopted by the court. (App. 9).

Contrary to the court's conclusion that its decision will not "portend[ ] a flood of prisoner litigation . . .", the decision does promise increased litigation. (App. 8). The court responds to its own assumption that prisoner litigation will not increase by stating that courts still will give deference to prison authorities on issues of prison discipline. The fact that a court ultimately may defer to prison administrators clearly does not alleviate the potential for an increase in litigation by prisoners who feel that substantial burdens have been placed on their religiously motivated conduct.

The decision, while predicting that a court "should be able to figure out . . . which religious practices are important to their practitioners and which are not", leaves unanswered how a prison official can "figure out" that same question on the day-to-day level of prison management. (App. 7). This is particularly true due to the difficulty prison officials have in disproving the sincerity of an inmate's religious belief. Given the difficulty prison officials would have in separating religiously motivated requests from philosophically motivated requests, it is essential in the operation of a prison that inmates show that the subject of their particular request is religiously mandated. A standard that requires protection against only

that conduct that is religiously mandated is the better approach over that which is measured merely by conduct that is religiously motivated.

The circuits that interpret RFRA to mean that a plaintiff must show that a substantial burden has been placed on conduct that is mandated by religion are correct. The *Goodall* court noted that its approach was consistent with that taken in *Hobbie v. Unemployment Appeals Commission of Florida*, 480 U.S. 136 (1987), where the Court stated that a burden upon religion exists when the state denies a benefit because of conduct mandated by religious belief. 60 F.3d at 172. In *Bryant*, the court indicated that it based its "mandated conduct" test on an earlier Ninth Circuit decision, *Graham v. C.I.R.*, 822 F.2d 844 (9th Cir. 1987), which was affirmed by this Court (*Hernandez v. Commissioner*, 490 U.S. 680 (1988) ("Neither the payment nor the receipt of taxes is forbidden by the Scientology faith generally, and Scientology does not proscribe the payment of taxes in connection with auditing or training sessions specifically.") 46 F.3d at 949.

The Seventh Circuit's chosen standard to measure RFRA claims is unnecessarily broad and is unworkable for prison officials. The standard allows plaintiffs to meet RFRA's threshold merely by alleging a burden, no matter how slight, and merely by making an allegation that their conduct is religiously motivated. This interpretation is inconsistent with the language of RFRA and extends far beyond the intent of Congress, which simply was to restore the compelling interest test to these types of claims.

CONCLUSION

For all of the foregoing reasons, the Court should grant the Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit or, in the alternative, hold this case for determination pending resolution of *City of Boerne v. Flores*, No. 95-2074.

Respectfully submitted,

JAMES E. RYAN
Attorney General of Illinois

BARBARA A. PREINER
Solicitor General of Illinois

RITA M. NOVAK*
JAN E. HUGHES
Assistant Attorneys General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-5659

*Counsel of Record

Attorneys for Petitioners

APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 95-1331

JOHN MACK,

Plaintiff-Appellant,

v.

MICHAEL O'LEARY, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 94 C 621—**Charles R. Norgle, Sr.**, *Judge.*

No. 94-1849

JOHN LEE LIPSCOMB-BEY,

Plaintiff-Appellant,

v.

HOWARD A. PETERS III, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Illinois.
Nos. 92 C 31, 92 C 55—**William D. Stiehl**, *Judge.*

SUBMITTED FEBRUARY 29, 1996—DECIDED APRIL 3, 1996

Before POSNER, *Chief Judge*, and MANION and KANNE, *Circuit Judges*.

POSNER, *Chief Judge*. We have consolidated for decision appeals by two Illinois state prisoners from the dismissal of their suits against prison officials in which they seek damages for alleged infringements of religious liberty. The appeals require us to consider for the first time the meaning of the term "substantially burden a person's exercise of religion," which is the key term in the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb.

No. 95-1331. Ramadan is a 30-day period, analogous to Lent, but much more rigorous, during which votaries of Islam are required to engage in fasting and other prescribed acts of abstinence and in which ritual duties, including prayer and purification, are to be discharged with the utmost punctiliousness. According to Mack's complaint, the factual allegations of which we must accept because the suit was dismissed for failure to state a claim, the defendants during Ramadan 1992 and 1993 refused to accommodate the religious needs of Mack and the other Muslim inmates of Stateville prison. The Muslims were forced to have their dinner (a ritual occasion during Ramadan, because fasting is required from sunrise to sunset) in the prison's mess hall immediately after the rest of the prison population had had its dinner. So there was no time to clean the floor, which was filthy from the previous diners, and as a result the Muslims were unable to prostrate themselves for prayer during the prayer intervals in their meal. The manner in which the tables in the mess hall were bolted to the wall, moreover, made it impossible for the diners to sit facing Mecca or to pray in the prescribed close formation. And because the mess hall lacked running water, the diners could not perform ritual purification (*wudu*) during their meals, which might become necessary if a diner defiled himself during the meal, for example by breaking wind.

The district judge did not think that these allegations demonstrated a substantial burden on the Muslims' exercise of their religion. "The alleged restrictions imposed

by the physical limitations of the facility may interfere with the desired method of prayer," he said, "but the restrictions do not trespass upon Mack's ability to retain and worship the principle that is central to Islam." In support of the judge's ruling, the defendants ask us to distinguish between a substantial burden and a mere inconvenience, and they argue that what Mack alleges is clearly the latter.

Mack is seeking only damages by way of relief, and has named only prison officials, and not the State of Illinois, as defendants. The defendants do not raise a defense of qualified immunity. They also do not question the propriety of damages as a remedy for violations of the Act, even though the Religious Freedom Restoration Act says nothing about remedies except that a person whose rights under the Act are violated "may assert that violation as a claim or defense in a judicial proceeding and obtain *appropriate* relief against a government." 42 U.S.C. § 2000bb-1(c) (emphasis added). (Previous decisions have assumed rather than discussed the availability of damages under the Act. See, e.g., *Brown v. Hot, Sexy & Safer Productions, Inc.*, 68 F.3d 525, 537-38 (1st Cir. 1995).) Although there is no indication of congressional intent to abrogate the states' Eleventh Amendment immunity from suit (another issue not discussed in previous cases), the Act defines "government" to include government employees acting under color of state law. § 2000bb-2(1). So Mack was entitled to sue the prison officials rather than the State of Illinois and does not face the bar of the Eleventh Amendment.

No. 94-1849. Lipscomb-Bey (who unlike Mack sought injunctive relief as well as damages in the district court) belongs to a religious sect known as the Moorish Science Temple of America. "Moors," as the adherents to the sect are known, celebrate January 8, the birthday of their founder, Drew Ali, with a Prophet's Day banquet. The Moors imprisoned in Menard requested but were refused permission to have such a banquet. The prison has grouped the more than 300 religious denominations represented at Menard (a number hard to believe, but not contested)

into four umbrella groups—Catholic, Jewish, Muslim, and Protestant—each of which is allowed one or two picnic days a year, which they can use for a sacred feast. No separate denomination is allowed its own picnic day. The prison classifies the Moors as Muslims, but they are pretty *sui generis*. They have a sacred book that they call the "Koran," but it is not the Islamic Koran, and while they respect Mohammed, along with Jesus and others, as prophets, they give primacy to their own prophet, Drew Ali. They are permitted to and do conduct their own religious services at Menard.

Lipscomb-Bey, unlike Mack, was given an evidentiary hearing on his claim that his religious rights were infringed by the refusal to allow the Moors to hold a banquet. At the hearing, the national leader of the Moors, Grand Sheikh Robert Love-El, testified that a Prophet's Day banquet was an important but not a required rite of the Moslem Science Temple. Officials of Menard testified that it would be utterly impractical to allow each of the 300 denominations to have its own feast day. The district court gave judgment for the defendants.

The Religious Freedom Restoration Act provides that "government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-(1)(b). The Supreme Court had held in *Employment Division v. Smith*, 494 U.S. 872 (1990), that a law of general applicability (there a law, similar to the federal drug laws, regulating the sale and use of certain "controlled substances") can be enforced against religiously motivated conduct (there the use of peyote as part of the religious rituals of an American Indian tribe) without infringing the free exercise clause of the First Amendment. The Act, the constitutionality of which is not questioned in either of these cases (and see *Flores v. City of Boerne*, 73 F.3d 1352 (5th Cir. 1996), upholding the Act as a valid exercise of Congress's powers under section 5

of the Fourteenth Amendment)—or its applicability to prison inmates (see, e.g., *Hamilton v. Schriro*, 74 F.3d 1545, 1552 (8th Cir. 1996))—enlarges the free-exercise right beyond the constitutional bounds set forth in *Smith*. "Congress by RFRA is demanding ad hoc review of laws of general applicability that substantially burden the free exercise of religion" but do not violate the Constitution as authoritatively interpreted in *Smith*. *Flores v. City of Boerne*, *supra*, 73 F.3d at 1361.

How far beyond? That is the question, and the circuits have answered it in different ways. The Fourth, Ninth, and Eleventh Circuits define "substantial burden" as one that either compels the religious adherent to engage in conduct that his religion forbids (such as eating pork, for a Muslim or Jew) or forbids him to engage in conduct that his religion requires (such as prayer). *Goodall by Goodall v. Stafford County School Board*, 60 F.3d 168, 172-73 (4th Cir. 1995); *Cheffer v. Reno*, 55 F.3d 1517, 1522 (11th Cir. 1995); *Bryant v. Gomez*, 46 F.3d 948 (9th Cir. 1995) (per curiam). The Eighth and Tenth Circuits use a broader definition—action that forces religious adherents "to refrain from religiously motivated conduct," *Brown-El v. Harris*, 26 F.3d 68, 70 (8th Cir. 1994), or that "significantly inhibit[s] or constrain[s] conduct or expression that manifests some central tenet of a [person's] individual beliefs," *Werner v. McCotter*, 49 F.3d 1476, 1480 (10th Cir. 1995), imposes a substantial burden on the exercise of the individual's religion. The Sixth Circuit seems to straddle this divide, asking whether the burdened practice is "essential" or "fundamental," *Abdur-Rahman v. Michigan Dept. of Corrections*, 65 F.3d 489, 491-92 (6th Cir. 1995).

These verbal differences may be accidental, or may come to nothing in practice. None of the cases that we have cited expresses an awareness of an intercircuit split; nor is it clear that any of the holdings (as distinct from many of the dicta) are inconsistent. But we do think that the more generous definition is more faithful both to the statutory language and to the approach that the courts took before *Smith*, in cases like *Sherbert v. Verner*, 374

U.S. 398 (1963), and *Thomas v. Review Board*, 450 U.S. 707, 717-18 (1981)—which is the approach that Congress wanted them to take under the Religious Freedom Restoration Act. 42 U.S.C. § 2000bb(b)(1); see also S. Rep. No. 111, 103d Cong., 1st Sess. 5-9 (1993); H.R. Rep. No. 88, 103d Cong., 1st Sess. 2-7 (1993). We hold, therefore, that a substantial burden on the free exercise of religion, within the meaning of the Act, is one that forces adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs.

What we are calling the generous definition is also the one more sensitive to religious feeling. Many religious practices that clearly are not mandatory, such as praying the rosary, in the case of Roman Catholics, or wearing yarmulkes, in the case of Orthodox Jews (optional because while Jewish men are required to cover their heads, the *form* of the head covering is not prescribed), are important to their practitioners, who would consider the denial of them a grave curtailment of their religious liberty.

But the decisive argument in favor of the generous definition of "substantial burden," it seems to us, is the undesirability of making judges arbiters of religious law, *Thomas v. Review Board*, *supra*, 450 U.S. at 716; *Reed v. Faulkner*, 842 F.2d 960, 963 (7th Cir. 1988), as required by the alternative approach. That approach, the approach of the Fourth, Ninth, and Eleventh Circuits, requires the courts to determine what practices the plaintiff's religion obligates him to follow, and this is an issue of religious law, requiring the court to determine the authoritative sources of law for the religion in question and to interpret the commands emanating from those sources. In the case of hierarchical religions such as Roman Catholicism this process of identification and interpretation, which resembles the procedures of legal positivism, is feasible. In the case of nonhierarchical religions, however, such as Islam, Judaism, and a multitude of Protestant sects, the

process is infeasible, or at least very difficult and attended with a high degree of indeterminacy. The danger that courts will find themselves taking sides in religious schisms, if they must opine on matters of religious obligation, is not a trivial one.

The other approach, the approach that does not tie burden on religion to religious law, is not immune from the danger of putting judges into the awkward position of taking sides in religious controversies—a danger that was one of the things that persuaded the Supreme Court in *Smith* to abandon the approach as a matter of constitutional interpretation. 494 U.S. at 886-87. For it requires the court to separate center from periphery in religious observances. But that is an inquiry sociological rather than legal in character and the risk of taking sides in religious controversies is less. A court should be able to figure out, usually from its own observations ("common knowledge") but if need be from evidence, which religious practices are important to their practitioners and which are not without having to determine who in the religion is authorized to lay down dogma and what the content of that dogma is. Under the 27-year regime overturned in *Smith* the courts did not encounter insuperable difficulties in determining the importance of the various practices the burdening of which was claimed to be substantial. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 215-19 (1972); *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 451 (1988); *Young v. Lane*, 922 F.2d 370, 376-77 (7th Cir. 1991). All this is not to deny that when it is known without need for judicial inquiry that the practice in question either is or is not mandatory, this adds weight to, or subtracts weight from, the substantiality of the burden. See, e.g., *Menora v. Illinois High School Ass'n*, 683 F.2d 1030, 1034 (7th Cir. 1982). But it does not conclude the issue.

Mack's case illustrates the superiority of the broader definition of substantial burden. It would be an exquisitely difficult undertaking for a court to determine whether the practices that he claims the defendants interfered with, such as facing Mecca while eating Ramadan meals or puri-

fying oneself during as well as before the meals, are actually obligatory for Muslims. There are different branches of Islam, of which the Sunni and the Shiite are merely the best known, so that the court would first have to determine which branch the plaintiff considered himself to be a member of. And neither branch has a supreme leader, corresponding to the Pope or to the Patriarch of the Russian Orthodox Church, to whom a court might look for a definitive ruling on a subtle or contested article of faith. The proper and feasible question for the court is simply whether the practices in question are important to the votaries of the religion, and being factual that is not a question that can usually, or here, be resolved on the pleadings. Mack has stated a claim by alleging that the defendants have substantially burdened the exercise of his religious rights. A remand will be necessary in his case to determine whether the claim has merit.

We do not think that this conclusion portends a flood of prisoner litigation that will make the management of American prisons even more difficult than it is already. Although once a substantial burden on the plaintiff's practice of the religion is shown the burden shifts to the defendant to show that the state has a compelling interest in imposing the burden and could not protect that interest by some less burdensome means, we find nothing in this formulation, or in the history of the statute, to suggest that Congress intended to undermine the judicial policy of deference to prison authorities on issues of prison discipline. *Hamilton v. Schriro*, *supra*, 74 F.3d at 1552. On the contrary, the legislative history is explicit in recognizing that the interest in maintaining order in prisons is a compelling governmental interest and one that frequently requires and so justifies limitations on freedom of religious conduct. As the House Report put it, "religious liberty claims in the context of prisons and the military present far different problems for the operation of those institutions than they do in civilian settings. Ensuring the safety and orderliness of penological institutions, as well as maintaining discipline in our armed forces, have been

recognized as governmental interests of the highest order." H. Rep. No. 88, *supra*, at 8. The Senate Committee said that it "expects that the courts will continue the tradition of giving due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources." S. Rep. No. 111, *supra*, at 10 (footnote omitted).

It would be premature to decide whether the defendants in Mack's case were justified in restricting the religious observances of their Muslim prisoners as they did, because they have not as yet attempted to justify them. But it is fairly obvious that tables in prison mess halls have to be bolted to the floor, since they would be formidable weapons in a prison riot, and that alternative eating places may not be available for festal occasions such as Ramadan or Christmas dinners. The prison officials do not have to do handsprings to accommodate the religious needs of inmates, and the less central an observance is to the religion in question the less the officials must do.

These points are further illustrated by Lipscomb's case. We know from Grand Sheikh Love-El's testimony that the Moors at Menard are not strictly required by their religion to hold a Prophet's Day banquet, that it is enough to attend services on or about January 8 celebrating the Prophet's birthday. This is not conclusive against a violation of the Act if we are right that the practice of a religion can be substantially burdened by the curtailment of a nonmandatory observance. The Grand Sheikh's testimony indicates that a Prophet's Day banquet is an important though not absolutely essential rite for Moors, and hence that the refusal to allow the banquet did impose a substantial burden on Lipscomb-Bey's religious freedom. But the defendants overcame the prima facie case thus made out by establishing both a compelling governmental interest in imposing the modest burden and the absence of any less restrictive alternative. If not every one of the 300 denominations said to be represented at Menard, then

undoubtedly a large fraction of them, could make a persuasive case that a periodic communal meal of some sort is a rite of their religion. From the Jewish Seder (which was also Jesus Christ's last supper) to the Ramadan meals in Mack's case, communal eating is a standard rite in many religions. Menard cannot sponsor 300 banquets a year, or even 100. Its grouping of the denominations into four umbrella groups for purposes of festal occasions is all that the law could reasonably be thought to require of so religiously heterogeneous a prison. Lipscomb-Bey raises some other issues, but they do not have enough merit to warrant discussion. The judgment in his case must be affirmed.

But we must still tie up some loose ends in Mack's case. The complaint alleges that in addition to violating the Religious Freedom Restoration Act, the defendants denied the Muslim prisoners equal protection of the law by being much more accommodating of the needs of Christian prisoners. This part of the suit is based not on the Act, but on 42 U.S.C. § 1983, which creates a tort remedy against persons who infringe constitutional rights under color of state law. The district judge did not mention the equal protection claim and it is not obvious on what basis it could be rejected on the bare pleadings. The judge was right to dismiss so much of the suit as seeks damages under section 1983 from the defendants in their official rather than individual capacities, because such a claim is barred by the Eleventh Amendment (the defendants did interpose the Eleventh Amendment as a defense to Mack's equal protection claim, though not with respect to his claim under the Religious Freedom Restoration Act), and also right to dismiss so much of the suit as seeks relief under the free-exercise clause of the First Amendment rather than under the Act, since *Smith* bars the former.

What we described as the equal protection claim, however, could equally well be described as a claim under the free-exercise clause, which forbids government to discriminate between religions, *Reed v. Faulkner*, *supra*, 842 F.2d at 962; and so the First Amendment is not entirely

out of the case. We are mindful of occasional judicial language to the effect that the Act "superseded" or "overturned" the understanding of the free-exercise clause expressed in *Smith* and some other First Amendment cases—notably *O'Lone v. Shabazz*, 482 U.S. 342 (1987), which allowed prison officials to restrict religious observances by prisoners without showing a compelling interest, impossible to protect by a less restrictive means, for doing so. *Giano v. Senkowski*, 54 F.3d 1050, 1053 (2d Cir. 1995); *Werner v. McCotter*, *supra*, 49 F.3d at 1479. But a statute cannot either enlarge or contract the Constitution. Nor do the defendants in these cases argue that the statute is intended to provide the exclusive means (exclusive, that is, of 42 U.S.C. § 1983, the usual vehicle for seeking civil relief against constitutional violations) for enforcing rights conferred by the free-exercise clause, as the Education of the Handicapped Act was held to do in *Smith v. Robinson*, 468 U.S. 992, 1009-13 (1984), with respect to certain equal protection claims. The Religious Freedom Restoration Act says very little about remedies, so it is unlikely that Congress intended it to displace the existing remedial system for constitutional violations, but in any event such displacement is not argued.

The judgment in Mack's case (No. 95-1331) is affirmed in part (the part based on the Eleventh Amendment), but is otherwise reversed and his case remanded for further proceedings consistent with this opinion. The judgment in Lipscomb-Bey's case (No. 94-1849) is affirmed in its entirety.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT – WITHOUT ORAL ARGUMENT

Date: April 3, 1996

BEFORE:

Honorable RICHARD A. POSNER, Chief Judge
Honorable DANIEL A. MANION, Circuit Judge
Honorable MICHAEL S. KANNE, Circuit Judge

No. 94-1849

JOHN L. LIPSCOMB-BEY,

Plaintiff-Appellant,

v.

HOWARD A. PETERS, III, GEORGE C. WELBORN, Warden Menard Correctional Center, ALAN L. FRENTZEL, Assistant Warden of Menard Correctional Center, et al.,

Defendants-Appellees.

No. 95-1311

JOHN MACK,

Plaintiff-Appellant,

v.

MICHAEL O'LEARY, et al.,

Defendants-Appellees.

Appeals from the United States District Court
for the Southern District of Illinois, East St. Louis Division
No. 92 C 55—William D. Stiehl, Judge (94-1849)
No. 94 C 621—Charles R. Norgle, Sr., Judge (95-1331)

The judgment of the district court in appeal No. 95-1331 is AFFIRMED in part (the part based on the Eleventh Amendment), but is otherwise REVERSED and REMANDED for further proceedings. Appeal No. 94-1849 is AFFIRMED. The above is in accordance with the decision of this court entered on this date.

App. 14

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

January 8, 1997

Before

Hon. Richard A. Posner, Chief Judge
Hon. Daniel A. Manion, Circuit Judge
Hon. Michael S. Kanne, Circuit Judge

JOHN MACK,

Plaintiff-Appellant,

No. 95-1331 v.

MICHAEL O'LEARY, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 94 C 621—Charles R. Norgle, Sr., *Judge.*

JOHN LEE LIPSCOMB-BEY,

Plaintiff-Appellant,

No. 94-1849 v.

HOWARD A. PETERS III, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Illinois.
Nos. 92 C 31, 92 C 55—William D. Stiehl, *Judge.*

ORDER

Defendants-appellees filed a petition for rehearing, and a supplement thereto, with suggestion for rehearing en banc. All the judges on the original panel have voted to deny the petition, and none of the active judges has requested a vote on the suggestion for rehearing en banc. The petition is therefore DENIED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

JUDGMENT IN A CIVIL CASE

JOHN LIPSCOMB-BEY

v. Case Number: 92-CV-31-WDS

HOWARD PETERS, GEORGE C. WELBORN, ALAN FRENTZEL and LEO HAYES

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of defendants, HOWARD PETERS, GEORGE C. WELBORN, ALAN FRENTZEL, AND LEO HAYES, and against the plaintiff, JOHN LIPSCOMB-BEY, pursuant to the Court's Order of March 9, 1994.

March 9, 1994
Date

Stuart J. O'Hare
Clerk

/s/ Sandy Pannier
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGMENT IN A CIVIL CASE

JOHN MACK

v. Case Number: 94 C 621

MICHAEL O'LEARY, et al.

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the motion of defendants to dismiss the complaint is granted and the complaint is dismissed with prejudice.

January 9, 1995
Date

H. Stuart Cunningham
Clerk

/s/ J.W. Fulbright
(By) Deputy Clerk

[Dated January 9, 1995]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN MACK, Plaintiff,	)	No. 94 C 621
v.	)	HONORABLE
MICHAEL O'LEARY, Deputy Director, SALVADOR GODINEZ, Warden, J. SPRINGBORN, Assistant Warden, and J. SCHOMIG, Assistant Warden, Defendants.	)	CHARLES R. NORGLE

OPINION AND ORDER

CHARLES R. NORGLE, SR., District Judge:

Before the court is the motion of defendants Michael O'Leary, Salvador Godinez, James M. Schomig, and Jerome Springborn ("defendants") to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failing to state a cause of action. For the following reasons, the motion is granted and the complaint is dismissed with prejudice.

FACTS[1]

Plaintiff John Mack ("Mack") is a convicted felon currently serving his sentence at Centralia Correctional Center in Centralia, Illinois. During the period relevant to this litigation, Mack was incarcerated at Stateville Correctional Center ("Stateville"). According to Mack's allegations, defendants deprived him of his right to freely exercise the Islam faith. The complaint alleges that in 1992 and 1993, defendants refused to allow Mack to worship and pray in the manner prescribed by the Muslim Community Standard during the Fast of Ramadan.

More specifically, Mack complains that during the relevant periods, he was forced to pray to Allah in a cafeteria where there was no facility or running water to purify his body, a cafeteria that was unclean and unsuitable for a religious observance, a cafeteria that was equipped with bolted tables which hindered Mack from taking the close body formation required to pray to Allah, and was forced to pray facing the guard tower. The prison officials at Stateville allowed Mack to purify himself only with the water available in his cell before being taken to the cafeteria. Mack was then allowed to consume his meal and to hold his prayer meeting at the conclusion of the meal.

DISCUSSION

On a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), all well-pleaded factual allegations are presumed to be true. *Land v. Chicago Truck Drivers*, 25 F.3d 509, 511 (7th Cir. 1994). The court must view

[1] The following facts are drawn from the complaint filed on January 31, 1994, and a pleading filed in response to defendants' motion to dismiss.

those allegations in the light most favorable to the plaintiff, *Gould v. Artisoft, Inc.*, 1 F.3d 544, 546 (7th Cir. 1993), and accept all reasonable inferences to be drawn from those allegations as true. *Meriwether v. Faulkner*, 821 F.2d 408, 410 (7th Cir.), *cert. denied*, 484 U.S. 935 (1987). Furthermore, *pro se* complaints are to be liberally construed, and *pro se* civil rights complaints may be dismissed only "if it is beyond doubt that there is no set of facts under which the plaintiff could obtain relief." *Wilson v. Civil Town of Clayton, Ind.*, 839 F.2d 375, 378 (7th Cir. 1988). The complaint must, however, state allegations, either directly or inferentially, to establish the necessary elements for recovery under the chosen legal theory. *Glatt v. Chicago Park Dist.*, 847 F. Supp. 101, 103 (N.D. Ill. 1994).

In the instant action, Mack seeks to recover monetary damages from defendants in their individual capacities as well as in their official capacities as officials with the Illinois Department of Corrections ("IDOC"). Mack claims he is entitled to monetary damages because defendants violated his right to freely exercise his religion as guaranteed by the First and Fourteenth Amendment. In contrast, defendants contend that even if all of Mack's allegations are true, they fail to state a § 1983 cause of action. The court agrees.

The claim of constitutional violation against defendants in their official capacities is insufficient as a matter of law and must be dismissed pursuant to Federal Rule of Civil Procedure 12 (b) (6) with prejudice. A suit against a state official in his or her official capacities is treated as a suit against the State. *Hafer v. Melo*, 502 U.S. 21, 112 S. Ct. 358, 361 (1991); *Frances J. v. Wright*, 19 F. 3d 337, 342 (7th Cir.), *cert. denied*, 115 S. Ct. 204 (1994). While a local governmental entity may be subject to liability under

§ 1983 because it is considered a "person" within the meaning of that provision, *Baxter by Baxter v. Vigo County School Corp.*, 26 F.3d 728, 734 (7th Cir. 1994), a State is not a "person" subject to § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 109 S. Ct. 2304, 2312 (1989). In this case, defendants are Illinois officials; thus, Mack's claim against them in their official capacities as IDOC officials, are outside the scope of § 1983.

Furthermore, Mack's claim against defendants in their official capacities is barred under the Eleventh Amendment. *Garcia v. City of Chicago, Ill.*, 24 F.3d 966, 969 (7th Cir. 1994). "The Eleventh Amendment prohibits federal courts from deciding suits brought by private litigants against states or their agencies, and that prohibition extends to state officials acting in their official capacities." *Id.* This general rule is not without an exception. *See Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441 (1908). The doctrine of *Ex parte Young*, however, is a narrow exception which the United States Supreme Court has declined to provide expansive effect. *See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 113 S. Ct. 684, 688 (1993); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 104 S. Ct. 900, 909 (1984); *Edelman v. Jordan*, 415 U.S. 651, 94 S. Ct. 1347, 1357-58 (1974). The exception only applies to "prospective relief, does not permit judgments against state officers declaring that they violated federal law in the past and has no application in suits against the States and their agencies, which are barred regardless of the relief sought." *Puerto Rico Aqueduct*, 113 S. Ct. at 688 (citation omitted). In the instant matter, Mack complains of defendants' conduct in 1992 and 1993 and requests monetary relief. Accordingly, the general rule bars the claim against defendants in their official capacities.

State officials sued in their individual capacities are, however, "persons" for purposes of § 1983 and may be subject to liability. *Hafer*, 112 S. Ct. at 360. Nonetheless, Mack's claim against defendants in their individual capacities does not fare any better. To state a cause of action under § 1983 against defendants in their individual capacities, Mack must establish two elements: (1) that defendants were acting under color of state law; and (2) that their conduct deprived plaintiff of his federal rights. *Parratt v. Taylor*, 451 U.S. 527, 101 S. Ct. 1908, 1912-13 (1981); *Procopio v. Johnson*, 994 F.2d 325, 328 (7th Cir. 1993); *Letisha A. by Murphy v. Morgan*, 855 F. Supp. 943, 947 (N.D. Ill. 1994). Defendants do not challenge the sufficiency of the complaint as it relates to the first element. They do, however, contend that Mack fails to establish the second element in his complaint.

It is well established that prison inmates retain the right to freely exercise their religious beliefs under the Free Exercise Clause of the First Amendment. *Alston v. DeBruyn*, 13 F.3d 1036, 1039 (7th Cir. 1994). The right of a lawfully incarcerated individual under the Free Exercise Clause, however, is not as expansive as the right of a non-incarcerated individual. *O'Lone v. Estate of Shabazz*, 107 S. Ct. 2400, 2404 (1987); *Richards v. White*, 957 F.2d 471, 474 (7th Cir. 1992). With lawful incarceration, many privileges and rights, including the right to exercise religion, are restricted and limited. *Id.* (citing *Price v. Johnston*, 334 U.S. 266, 68 S. Ct. 1049, 1060 (1948)). Prison officials are required to make only a reasonable effort to provide the inmates an opportunity to practice their religion. *Alston*, 13 F.3d at 1039. "The limitations on the exercise of constitutional rights arise both from the fact of incarceration and from valid penological objectives—including deterrence of crime, rehabilitation of prisoners, and institutional security." *O'Lone*, 107 S. Ct. at 2404.

The court recognizes that Coñgress enacted the Religious Freedom Restoration Act of 1993 ("Act"), 42 U.S.C. § 2000bb, *et seq.*, "to restore the compelling interest test as set forth in [*Sherbert v. Verner*,] 374 U.S. 398 (1963) and [*Wisconsin v. Yoder*,] 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened . . . ." 42 U.S.C. § 2000bb(b). The Act provides a statutory claim or defense to those individuals whose religious freedom is "substantially burdened" by a governmental entity. *Means v. Wortham*, 115 S. Ct. 460, 460 n.1 (1994) (mem.). The Act, however, has no application in this case because the complaint fails to establish that defendants "substantially burdened" Mack's exercise of his belief. *See Brown-El v. Harris*, 26 F.3d 68, 69 (8th Cir. 1994).

The allegations in this case demonstrate that, while Mack was incarcerated in Stateville, defendants made a reasonable effort to provide him an opportunity to practice his faith during the month of Ramadan in 1992 and 1993. Defendants gave Mack the opportunity to purify his body before being escorted to the cafeteria and permitted to worship and pray with other followers in the cafeteria. While the allegations establish that worshipers were unable to do certain things during prayer, the allegations do not rise to the level of "substantial burden." The alleged restrictions imposed by the physical limitations of the facility may interfere with the desired method of prayer, but the restrictions do not trespass upon Mack's ability to retain and worship the principle that is central to Islam. *See Vernon v. City of Los Angeles*, 27 F.3d 1385, 1393 (9th Cir.), *cert. denied*, 115 S. Ct. 510 (1994). Thus, Mack fails to satisfy the second element necessary to state a § 1983 claim against defendants in their individual capacities.

CONCLUSION

For the foregoing reasons, the motion of defendants to dismiss the complaint is granted and the complaint dismissed with prejudice.

IT IS SO ORDERED.

ENTER:

CHARLES RONALD NORGLE, SR., Judge
United States District Court

DATED: January 9, 1995

App. 25

[Dated March 9, 1994]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN LIPSCOMB-BEY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CAUSE NO.
	)	92-CV-31-WDS
	)	
HOWARD PETERS, GEORGE C. WELBORN, ALAN FRENTZEL and LEO HAYES,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

STIEHL, District Judge:

This matter was submitted to Magistrate Judge Gerald B. Cohn for an evidentiary hearing pursuant to *McCarthy v. Bronson*, 500 U.S. 136 (1991). The magistrate recommends that judgment be entered for the defendants and against plaintiff in this cause of action. Plaintiff has filed objections to the magistrate's findings of fact and conclusions of law; therefore the Court will make a de novo review of the record pursuant to 28 U.S.C. § 636(b)(1).

At the time of the occurrences relevant to this action, plaintiff was incarcerated at the Menard Correctional Center, Chester, Illinois. Pursuant to 42 U.S.C. § 1983, plaintiff filed this action alleging that defendants violated his First Amendment right to practice his religion and his Equal Protection rights by canceling a religious ban-

quet scheduled to celebrate a holiday honored by the Moorish Science Temple of America.

Plaintiff has filed general objections to the magistrate's findings of fact. Plaintiff repeatedly objects to the magistrate's failure to make findings regarding banquets or picnics at other Illinois Department of Corrections facilities. However, at the hearing, the magistrate properly sustained all objections to questions on this subject as irrelevant, and evidence on this subject was not presented to the Court. Upon review of plaintiff's objections and the transcript of the July 22-23, 1993 evidentiary hearing, the Court ADOPTS the magistrate's factual findings.

Inmates retain the protections afforded by the First Amendment, including its directive that no law shall prohibit the free exercise of religion. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987). While such constitutional rights exist during incarceration, "lawful incarceration brings about the necessary withdrawal of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Id.*, *quoting Price v. Johnston*, 334 U.S. 266, 285 (1948). To ensure that appropriate deference is afforded to prison officials, a prison regulation which impinges inmates' constitutional rights is valid "if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). The Supreme Court has recognized four factors relevant in determining the reasonableness of defendants' decision to cancel the January 8 banquet: (1) a valid, logical, and neutral connection between the prison regulation and the purported governmental interest; (2) alternative means of exercise of religion; (3) the impact the asserted right would have on security, other inmates, and general allocation of prison resources; and (4) the absence of ready alternatives. *Id.* at 89-91.

Evidence presented at the hearing established that defendants canceled the January 8 banquet in accordance with a policy that individual religious denominations cannot have a banquet or picnic. This policy stems from the fact that hundreds of separate religious denominations exist at Menard, and allowing each group to have a banquet would endanger the security of the facility and overburden strained financial resources. Thus, the defendants' decision to deny the banquet has a logical and neutral connection to legitimate interests, and the decision is based on concerns of security and resource allocation. The defendants' decision comports with the other factors articulated in *Turner*, as members of the Moorish Temple are permitted to attend religious services, or celebrate the January 8 holiday in ways other than the proposed banquet. Moreover, plaintiff's freedom to exercise his religion has not been violated because plaintiff was allowed to participate in a religious service sufficient to satisfy the obligation to respect the January 8 holiday.

Prisoners are also protected by the Equal Protection Clause of the Fourteenth Amendment, *Turner*, 482 U.S. at 84, but the Equal Protection Clause does not guarantee absolute equality. *French v. Heyne*, 547 F.2d 994, 997 (7th Cir. 1976). The magistrate concluded that the evidence did not show an Equal Protection violation, and plaintiff objects to this conclusion on the grounds that another group was allowed to have a banquet but that defendants refused to allow the Moorish Science Temple of America banquet despite knowing the differences between the Moorish Temple and other Muslims. The fact that one organization had an indoor banquet does not establish an Equal Protection violation. Testimony indicated that the Moors were given various opportunities to have a picnic or banquet, but that the Moors rejected the proposals allowed

by prison officials. The four-factor analysis articulated above applies equally to establish that the decision to cancel the January 8 banquet was reasonably related to legitimate penological interests, and did not violate the Equal Protection Clause. In addition, even if defendants knew of the differences between Moors and other Muslims, plaintiff failed to show invidious discrimination or that defendants "singled out a particular group for disparate treatment and selected [a] course of action at least in part for the purpose of causing its adverse effects on the identifiable group." *Shango v. Jurich*, 681 F.2d 1091, 1104 (7th Cir. 1982).

To establish a § 1983 claim against a supervisory official, evidence must show a defendant's personal responsibility for the claimed deprivation of a constitutional right. *Wellman v. Faulkner*, 715 F.2d 269, 275 (7th Cir. 1983), *cert. denied*, 468 U.S. 1217 (1984). No evidence presented at the hearing indicated that defendant Peters approved, or even was aware of the decision at issue, therefore Peters cannot be held liable.

Upon review of plaintiff's objections, the transcript of the July 22-23, 1993 evidentiary hearing, and applicable law, the Court ADOPTS the magistrate's conclusions of law. The Court enters judgment in favor of defendants Howard Peters, George C. Welborn, Alan Frentzel, and Leo Hayes and against plaintiff John Lipscomb-Bey. The Clerk of the Court is directed to enter judgment accordingly.

IT IS SO ORDERED.

DATED: March 9, 1994

/s/ William D. Stiehl
DISTRICT JUDGE

[Dated July 27, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN LIPSCOMB-BEY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil No. 92-31-WDS
	)	
HOWARD PETERS, GEORGE C. WELBORN, ALAN FRENTZEL and LEO HAYES,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

This Report and Recommendation is respectfully submitted to Chief Judge William D. Stiehl pursuant to 28 U.S.C. § 636(b)(1)(B).

Plaintiff, an inmate at the Menard Correctional Center, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 on January 21, 1991. On July 17, 1992, the district court consolidated plaintiff's cause of action into the present case.

On June 16, 1993, this matter was referred by the district court for an evidentiary hearing pursuant to *McCarthy v. Bronson*, ____ U.S. ____, 111 S.Ct. 737 (1991). The evidentiary hearing commenced before this court on July 22, 1993, and concluded July 23, 1993. The Court, having considered the pleadings, the testimony of witnesses, the documents in evidence and being fully advis-

ed in the premises, hereby makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff, John Lipscomb-Bey, was at all times relevant herein an incarcerated person held in the custody of the Illinois Department of Corrections at the Menard Correctional Center, Chester, Illinois.

2. The plaintiff is a devoted adherent to a religious group known as the Moorish Science Temple of America which is based upon various tenets of the Islamic or Muslim faith. While the religion is based upon Islam, it is sufficiently different from other Muslim sects as to require separate religious services.

3. Defendant, Howard Peters, III, was at all times relevant herein an employee of the Illinois Department of Corrections who served as Director during the period of time in question.

4. Defendant, George C. Welborn, was at all times relevant herein an employee of the Illinois Department of Corrections who served as Warden of the Menard Correctional Center during the period of time in question.

5. Defendant, Alan Frentzel, was at all times relevant herein an employee of the Illinois Department of Corrections who served as Assistant Warden of Programs for the Menard Correctional Center during the period of time in question.

6. Defendant, Leo Hayes, a Roman Catholic priest, was at all times in question an employee of the Illinois Department of Corrections who served as Senior Chaplain for the Menard Correctional Center during the period of time in question.

7. The Moorish Science Temple of America is a branch of the Muslim faith. Adherents of this religion are not required to observe the fast of Ramadan, but are required to celebrate the birthday of their beloved Prophet Noble Drew Ali which is on January 8.

8. Testimony by Robert Love-El, Grand Sheik or the national leader of the Moorish Science Temple of America, indicated that the prophet's birthday is celebrated with speeches honoring the prophet and a recitation of the Koran. In free society, Brother Love-El stated that the celebration is accompanied by feasting and an exchange of gifts. According to testimony, this custom has been observed for sixty years within the faith.

9. Brother Love-El further testified that while the feasting and gift-giving are part of the celebration, attendance at a religious service will satisfy all religious obligations.

10. Although the members of the M.S.T.A. have not been allowed to have a religious banquet on or about January 8, their feast day, adherents of the religion are permitted a religious service to celebrate the prophet's birthday and can celebrate on that day specifically.

11. Religious groupings at the Menard Correctional Center have been divided into four main "umbrella" groups modelled upon the scheme utilized by the United States Army. Under this group, faiths are classified as Jewish, Catholic, Islamic or Protestant.

12. The Menard Correctional Center has three chaplains to minister to the four religious groups. Under the umbrella scheme, defendant, Leo Hayes is responsible for the Catholic and Jewish services; Iman Abdur Mu'Min is responsible for Muslim services; and, Rev. William Van Buren for Protestant services.

13. By dividing the various religious faiths into the four umbrella groups, the chaplains at the Menard Correctional Center are able to supervise and to provide some degree of religious worship to adherents of the approximately 300 religious sects which exist in the United States today.

14. If a religious group within the prison does not want to utilize the services of a prison chaplain, that group may have an outside volunteer minister acceptable to the prison authorities provide services.

15. Each of the religious umbrella groups is allowed to have a picnic day at the Menard Correctional Center during the summer. At the picnic, each inmate is allowed to have outside guests and a festive atmosphere is encouraged.

16. According to defendant Frentzel, the picnics are a good and positive experience for the inmates designed to provide a pleasurable hour of fellowship with families and other inmates. One principle purpose of the picnic is to allow inmates to maintain or re-establish ties to the outside.

17. Specific religious denominations are not allowed to have picnics on their own.

18. Testimony indicated that the Menard Correctional Center cannot accommodate each and every religious group with a picnic. The institution would prohibit all picnics rather than attempt to cater to each and every religious group.

19. In the summer of 1990, the M.S.T.A. did not attend the picnic held on the yard for members of the various umbrella groups. Failure to attend was apparently based upon a belief that the institution would allow them to have a feast celebrating the prophet's birthday.

20. Since the M.S.T.A. did not have a picnic, it was decided to allow them to have a feast/banquet on a one time only basis in March of 1991.

21. It is unquestioned that the M.S.T.A. attempted to have a religious feast in January of 1991, which was canceled by the defendant Frentzel. In denying the banquet, defendant Frentzel considered security concerns, problems with seating guests in the gym/multi-purpose building and in accommodating guests at night within the institution.

22. After attempting to organize and gain approval for the one time feast, the event was also canceled because the plaintiff would not agree to the date or the restrictions placed by the defendants on the feast. According to testimony, the plaintiff was not happy and felt that more people should have been placed on the list to attend the banquet.

23. While the administration at Menard would not approve a feast day which would have attendance by outside family members, members within the institution could have celebrated with their own feast. However, the M.S.T.A. members were adamant that family members from the outside had to attend the function.

24. One difference between the picnic and the M.S.T.A. banquet was the time of year. January 8 is in the winter and would have required the use of the multi-purpose building to accommodate the inmates and their guests. This creates problems with the introduction of large groups of outside people into the institution and could cause a breach in security since the administration does not want to bring outside people into a maximum security institution. In contrast, the summer picnics are held

outside the institution on the front yard between May and October.

25. Picnic type functions are also limited by financial and manpower constraints. Because of the change or priority caused by the outside functions, other programs may suffer.

26. Howard Peters, as Director of the Illinois Department of Corrections, was not involved in the decision to cancel the banquet/feast celebrating the birth of Prophet Noble Drew Ali in 1991. The decision to cancel was made by Asst. Warden Frentzel after consultation with Warden Welborn.

27. Prior to the evidentiary hearing subpoenas were issued to Imam Abdur Mu'Min, George Welborn, Howard Peters, III, Alan Frentzel, Fr. Leo Hayes, Alan Page, Bro. Clifford Warner-Bey and Bro. Robert Love-El. While the subpoenas were issued they were not accompanied by the requisite witness fees or mileage.

28. The following Conclusions of Law insofar as they may be considered Findings of Fact are so found by this court to be true in all respects.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties pursuant to 28 U.S.C. § 1343.

2. The claim stated in this cause of action is that the defendants violated the plaintiff's First Amendment rights by canceling a scheduled religious banquet to celebrate the birth of the prophet Noble Drew Ali and refusing to accommodate their desire to have a religious feast with outside guests.

3. It is well established that although prisoners are afforded certain rights while in prison, these rights may be limited or withdrawn under certain circumstances. *Price v. Johnston*, 334 U.S. 266, 285 (1948). An inmate retains those "First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the penal system," *Pell v. Procunier*, 417 U.S. 817, 822 (1974).

4. In limiting an inmate's First Amendment rights, prison officials may consider such goals as security, order and rehabilitation. *Pell* at 822-826. Finally, as the Supreme Court stated in *Turner v. Safely*, 482 U.S. 78 (1987), "[if *Pell*, *Jones*, and *Bell* have not already resolved the question posed in *Martinez*, we resolve it now; when a prison regulation impinges an inmate's constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interest."

5. Inmates in a penal institution retain a First Amendment right to the free exercise of religion. *Cruz v. Beto*, 405 U.S. 319 (1972).

6. While the freedom to believe is absolute, the exercise of religion is not. *Childs v. Duckworth*, 705 F.2d 915, 920 (7th Cir. 1983).

7. A prison regulation impinging on an inmate's First Amendment right concerning the exercise of his religion is valid when based upon legitimate security concerns. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348, 351-52 (1987).

8. States may make non-discriminatory religious determinations that have the effect of impinging (even to a great extent), the ability to practice religion. *Employment Division v. Smith*, ____ U.S. ____ , 110 S.Ct. 1595 (1990); *Hunafa v. Murphy*, 907 F.2d 46 (1990).

9. The treatment of prison inmates is protected by the Equal Protection Clause of the Fourteenth Amendment. *Cruz v. Beto*, 405 U.S. 319 (1972); *Durso v. Rowe*, 579 F.2d 1365, 1372 (7th Cir. 1978), *cert. denied*, 439 U.S. 1121 (1979). The Equal Protection Clause does not guarantee absolute equality or precisely equal advantages. *French v. Heyne*, 547 F.2d 994, 997 (7th Cir. 1976). In a suit for violations of plaintiff's equal protection rights, the plaintiff must demonstrate intentional or purposeful discrimination to show that plaintiff's equal protection rights have been violated. *Shango v. Jurich*, 681 F.2d 1091 (7th Cir. 1982). The requirement of a discriminatory purpose "implies that the decisionmaker singled out a particular group for disparate treatment and selected his course of action, at least in part, for the purpose of causing its adverse effects on the identifiable group. . . . An administrative decision which misinterprets or distorts a valid state law can result in a denial of equal protection *if* there is such a design or intent to discriminate." *Id.*

10. The Court concludes that the defendants did not improperly cancel the scheduled M.S.T.A. feast honoring the birthday of the Prophet Noble Drew Ali. Testimony established that individual religious denomination are not allowed to have separate banquet/feasts. These type of activities must be conducted within the umbrella groups establish by the institution to ensure that each inmate have equal access to the facilities. As further established, the burden that would be placed upon the institution to allow each religious group their own picnic and feasts would render the activities unworkable. The plaintiff is allowed to celebrate the prophet's birthday as required. The failure of the institution to allow the feast does not rise to constitutional import.

11. In *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983), the Court stressed that § 1983 creates a cause of action based upon personal liability and predicated upon fault. An individual cannot be held liable in a § 1983 action unless he caused or participated in an alleged constitutional deprivation. *McBride v. Soos*, 679 F.2d 1223 (7th Cir. 1982); *Adams v. Pate*, 445 F.2d 105 (7th Cir. 1971). Without a showing of direct responsibility for the improper action, liability will not lie against a supervisory official. A causal or an affirmative link between the misconduct complained of in the official suit is necessary. *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983). In short, individual liability is predicated upon personal responsibility. *Schultz v. Baumgart*, 738 F.2d 231, 238 (7th Cir. 1984). To establish personal involvement, the plaintiff must establish (1) that the defendant acted or failed to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or (2) the conduct which caused the constitutional deprivation occurred either at the defendant's direction or with his knowledge and consent. *Crowder v. Lash*, 687 F.2d 996, 1005 (7th Cir. 1982); *Wellman v. Faulkner*, 715 F.2d 269, 275 (7th Cir. 1983); *cert. denied*, 468 U.S. 1217 (1983). Finally, to establish a claim against a supervisory official, there must be a showing that the official knowingly, willingly or at least recklessly cause the alleged deprivation by his action or failure to act. *Smith v. Rose*, 761 F.2d 360 (7th Cir. 1985); *Rascon v. Hardiman*, 803 F.2d 269 (7th Cir. 1986).

12. The Court further concludes that defendant, Howard Peters, did not violate the constitutional rights of the plaintiff in denying him a scheduled religious feast. Testimony established that Director Peters was not involved in the decision to cancel the feast honoring the birth of the prophet Noble Drew Ali. Furthermore, liability can-

not be established based upon defendant Peters' position as Director of the Illinois Department of Corrections.

13. Title 28, United States Code § 1654 provides that parties may plead or conduct their own cases personally or by counsel. Federal Rule of Civil Procedure 45(c) does not require the attendance at trial of parties who are not furnished witness fees of mileage. Accordingly, the failure of defendants Peters or Welborn to attend the evidentiary hearing cannot be held against them.

Accordingly, it is the recommendation of this Court that judgment be entered for the defendants and against the plaintiff in this cause of action.

Dated this 27th day of July, 1993.

GERALD B. COHN
UNITED STATES MAGISTRATE JUDGE

CHAPTER 21B.
RELIGIOUS FREEDOM RESTORATION

§ 2000bb. Congressional findings and declaration of purposes

(a) **Findings.** The Congress finds that—

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) **Purposes.** The purposes of this Act are—

(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

§ 2000bb-1. Free exercise of religion protected

(a) In general. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

§ 2000bb-2. Definitions
As used in this Act—

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a State, or a subdivision of a State;

(2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means the exercise of religion under the First Amendment to the Constitution.

§ 2000bb-3. Applicability

(a) In general. This Act applies to all Federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of this Act [enacted Nov. 16, 1993].

(b) Rule of construction. Federal statutory law adopted after the date of the enactment of this Act [enacted Nov. 16, 1993] is subject to this Act unless such law explicitly excludes such application by reference to this Act.

(c) Religious belief unaffected. Nothing in this Act shall be construed to authorize any government to burden any religious belief.

§ 2000bb-4. Establishment Clause unaffected

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding benefits or exemptions.